THE STATISTICS OF MALAPPORTIONMENT

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Baker v. Carr [1] has unlocked the Federal courthouse door for citizens who claim their legislative vote is not being counted equally. The effects of this decision upon the judges inside and the politicians outside have been suggested earlier. No less important, however, is how the newly admitted citizens will fare once they cross the threshold. Their reception in the court largely depends upon *facts*—they must prove, first, that there is inequality, and, second, that the inequality is of such proportions as to be unconstitutional.

Unequal Equality

Unquestionably, the vote of some people in every state is being diluted, while by comparison that of their neighbor's is weighted. In Vermont, for example, where representatives to the lower house are chosen from towns as they existed in 1793, one voter in the state's smallest district has 872 votes compared to his neighbor in Burlington, the state's largest city. The votes of 11.6 per cent of the people can control the house.[2] In California, it requires the votes of 422 citizens of Los Angeles County (population 6,038,771), who have one state senator, to equal the vote of a citizen of the 28th senatorial district (population 14,294), which also has one senator.[3] These examples, while extreme, are not isolated, but rather exemplify the pattern of minority (which today means rural) control of state legislatures. These situations challenge a fundamentally accepted principle of representative government—that the majority, not a minority, should govern.[4]

This principle, however, even if relaxed to the point at which a majority of the legislators would be elected from districts containing at least 40 per cent of the people, would, according to available data, permit only 26 legislative

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1. 369 U.S. 186 (1962).

2. This percentage is found by listing all the districts in order of population and then adding, from the smallest to largest, until the total includes a bare majority of the total number of districts. For statistical data on legislative apportionment for all states see Appendix A. The apportionment plan of Vermont's senate was recently declared invalid, but the court was not asked to rule on the lower house's town-by-town formula. Mikell v. Rousseau, No. 385, Chittenden County, Supreme Court of Vermont, decided July 20, 1962, reported in the N.Y. Times, July 21, 1962, p. 44, col. 2 (city ed.).

3. CALIFORNIA LEGISLATURE, REPORT OF THE ASSEMBLY INTERIM COMMITTEE ON ELECTIONS AND REAPPORTIONMENT 76-77 (1959-1961).

4. Any citizen, if asked, would in all probability admit to a sense of outrage at the suggestion that his vote be counted for less in the election of legislative representatives than the vote of any other citizen. The principle that a vote cast be counted of equal value to any other is so fundamental to our understanding of democracy as to pass unchallenged. Yet, in practice, the system of legislative representation in one Ameri-

houses across the country to qualify.[5] Of these 26, only five—Massachusetts, New Hampshire, Oregon, West Virginia, and Wisconsin—require the election of a majority of the legislators of *both* houses by at least 40 per cent of the people. Forty-seven houses across the nation are controlled by one-third or less of the voters; and in 12 states this is true of both houses.[6] The most extreme case is Florida, where 12 per cent of the people control both houses.[7] All legislative houses nationally, save only the Missouri and Ohio Senates, have some districts with more than twice the population of others.

According to a study by Professors David and Eisenberg, as of 1955 Massachusetts, Virginia, and Oregon had the most equally representative legislatures; whereas Delaware, Nevada, and Florida had the least.[8] The most striking information in the David-Eisenberg report, however, is the gradual loss of voting strength by urban areas to their rural counterparts over the last fifty years.[9] The relative weight of the urban vote in state elections in 1910, as

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can state after another shows a tenacious disregard for this rudimentary requirement of political equality.

LARSON, REAPPORTIONMENT AND THE COURTS iii (1962), as quoted in Sims v. Frink, Civ. No. 1744-N, N.D. Ala. (decided July 21, 1962).

Cf. Gomillion v. Lightfoot, 270 F.2d 594, 612 (5th Cir. 1959) (Wisdom, J., concurring), *rev'd*, 364 U.S. 339 (1960):

> [I]n a democratic country nothing is worse than disfranchisement. And there is no such thing as being just a little bit disfranchised. A free man's right to vote is a full right to vote or it is no right to vote.

5. Reference is again being made to Appendix A for more expansive presentation of this data.

6. Alabama, Colorado, Delaware, Florida, Georgia, Idaho, Kansas, Maryland, New Mexico, Oklahoma, Tennessee and Utah. These statistics do not reflect any changes in the apportionment and districting laws made in the last few months under court duress.

7. For a detailed discussion of Florida's legislative reapportionment problem see Governor LeRoy Collins's final report, FLORIDA—ACROSS THE THRESHOLD at 34-54 (1960).

8. DAVID & EISENBERG, DEVALUATION OF THE URBAN & SUBURBAN VOTE, A STATISTICAL INVESTIGATION OF LONG-TERM TRENDS IN STATE LEGISLATIVE REPRESENTATION 5, table 4 (1961). The states are listed in the order of representativeness, as of 1955, with the figure after each state representing the representativeness of the legislature if all votes were exactly equal: Massachusetts (91.0); Virginia (87.6); Oregon (87.6); Wisconsin (86.4); West Virginia (84.6); Arkansas (84.5); Nebraska (83.8); Kentucky (82.8); New Hampshire (82.2); South Dakota (79.6); Maine (78.8); New York (78.0); Pennsylvania (77.0); Texas (76.7); Indiana (76.3); Illinois (75.4); Michigan (74.6); North Dakota (74.4); South Carolina (73.3); Missouri (71.1); Colorado (70.8); North Carolina (70.3); Washington (69.3); Wyoming (68.7); Louisiana (67.9); Minnesota (67.5); Mississippi (67.3); Utah (65.8); Tennessee (63.4); Iowa (63.2); Oklahoma (62.9); New Jersey (61.0); Idaho (60.6); Montana (59.2); Vermont (58.3); California (56.6); Kansas (56.3); New Mexico (66.8); Alabama (55.5); Georgia (53.2); Ohio (49.9); Rhode Island (47.7); Connecticut (46.1); Maryland (43.1); Delaware (42.1); Nevada (41.2); and Florida (34.9). Figures for Arizona were not available.

9. N.Y. Times, Feb. 4, 1962, § IV (The News of the Week in Review), p. 10, col. 7. Graphs show that in 1910, 49 per cent of the people lived in urban areas, with that figure increasing to 69.9 per cent in 1960. The national picture shows a similar anti-urban discrimination. These graphs show that only 42 per cent of the members of the House of Representatives are elected by the urban population.

compared with the "average" vote (100), was 81. This decreased to 76 in 1960, despite an increase in population from 14,853,000 in the fifteen counties with a population of over 500,000 to some 65,705,000 persons in sixty-four such counties in 1960. During the same period, the value of a vote in counties with a population of less than 25,000 (encompassing 27,421,000 people in 1910 and 23,064,000 in 1960) rose from 113 to 171.[10] As of March 1959, 31 of the 97 legislative houses had not been reapportioned in the previous twenty-five years, despite the tremendous shift in population to the cities, and the increase in the national population from about 135 million to almost 180 million.[11]

An even larger decrease in voting power has developed in the newly grown suburbs. In 1910, 17,154,000 persons lived in the 87 counties of the nation with a population between 100,000 and 500,000. That number rose to 48,542,000 for 238 counties by 1960. Yet the value of the vote for this group decreased from 91 in 1910 to 81 in 1960, a drop of over 10 per cent.[12]

Methods of Statistical Comparisons

It seems clear under *Baker* that a perfect 1:1 ratio need not be attained to comply with the constitution:

> [T]here is no requirement that any plan have mathematical exactness in its application. Only where, as here, the total picture reveals uncommen-

10. Cities with the largest drop: Miami, from 91 in 1910 to 16 in 1960; Los Angeles, from 91 to 54; Dallas, from 92 to 40; Houston, from 91 to 33; and Minneapolis, from 85 to 55.

11. 106 CONG. REC. 14901, 14903 (1960) (remarks of Senator Clark). The National Municipal League, a non-profit institution studying the problems of state and municipal governments, has recommended in its Model State Constitution (now under consideration) the removal of the entire reapportionment process from the legislature to the governor and a non-partisan board. The members of the board would be appointed by the governor, whose duty it would be to promulgate a redistricting plan within 90 to 120 days after the board is named, together with explanations of any variations from the suggested plan of the board, if they have submitted one. The state supreme court is given original and exclusive jurisdiction to review the promulgated plan and correct it or, if no plan is promulgated by the governor, to "make one or more orders establishing such a plan." Article 4, § 4.04. The standard the League sets for districting of the assembly is population, and senate districts are to be composed of three assembly districts to form a compact and contiguous senate district. See also, Reston, *How to Lose Elections Without Half Trying*, N.Y. Times, Jan. 31, 1962, p. 30, col. 3; and Hacker, *Message on the State of the States*, N.Y. Times, July 22, 1962, § VI (Magazine), p. 15. For discussions of the political issues involved in reapportionment, see Krock, *Apportionment and '64*, N.Y. Times, Aug. 26, 1962, § IV (The News of the Week in Review), p. 11; N.Y. Times, Aug. 24, 1962, p. 11, col. 2; N.Y. Times, April 7, 1962, p. 13, col. 1; Krock, *Apportionment Debate*, N.Y. Times, April 1, 1962, § IV (The News of the Week in Review), p. 11, col. 1; Reston, *And Who Are the Friends of the G.O.P.?*, N.Y. Times, March 28, 1962, p. 38, col. 3.

12. Suburban areas suffering the greatest vote dilution from 1910 to 1960 have been: New York City—Suffolk and Nassau counties decreased from 113 to 47 and 122 to 59 respectively; Chicago—Lake county went from 107 to 46; Philadelphia—Bucks county dropped from 148 to 63; Cleveland—Lake county decreased from 114 to 62; Kansas City, Mo.—Clay county went from 110 to 51, and Denver—Jefferson county dropped from 123 to 41. DAVID & EISENBERG, *op. cit. supra* note 8, at 8-13, tables 5-7.

> surables of both magnitude and frequency can it be said that there is present an invidious discrimination.[13]

Something called "invidious discrimination" is bad; apparently some apportionments, even if "discriminatory," are acceptable.[14] The difficult problem, therefore, is to draw a line between permissible and inpermissible inequality. The New York Court of Appeals phrased it most succinctly:

> We have no trouble whatever in detecting the difference between noon and midnight, but the exact line of separation between the dusk of evening and the darkness of advancing night is not so easily drawn.[15]

To muster evidence that dusk has passed into darkness is the second great factual challenge that lies beyond the unlocked doors. Some help, fortunately, is furnished by the pre-*Baker* state cases which have attempted to formulate the distinction between valid and invalid inequality.[16] All, however, basically turn on the selection of some arbitrary figure.[17]

The standard most often used by courts is a comparison between the largest and smallest district, according to population, in relation to each other and the average or theoretically perfect district.[18] These cases suggest that when the standard is equality of population, an apportionment plan resulting in one district containing more than double the population of another would be invalid. The collected state cases show that an almost equal number of legislative apportionment laws resulting in ratios of under two to one, supposedly apportioned on the basis of population, have been sustained or invalidated, while virtually every law yielding district with over a two to one ratio has been declared unconstitutional.

In the Michigan case of *Scholle v. Hare*,[19] for instance, the state's high court invalidated a constitutional provision apportioning the senate without

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13. Baker v. Carr, 369 U.S. 186, 260 (Clark, J., concurring).

14. Judicial standards under the equal protection clause are well developed and familiar, and it has been open to courts since the enactment of the fourteenth amendment to determine, if on the particular facts they must, that a discrimination reflects *no* policy, but simply arbitrary and capricious action. 369 U.S. at 226.

> The traditional test under the Equal Protection Clause has been whether a State has made "an invidious discrimination," as it does when it selects "a particular race or nationality for oppressive treatment." . . . Universal equality is not the test; there is room for weighing. As we stated . . . "The prohibition of the Equal Protection Clause goes no further than the invidious discrimination."

Id. at 244-45 (Douglas, J., concurring).

15. Baird v. Board of Supervisors of King's County, 138 N.Y. 95, 113, 33 N.E. 827, 833 (1893).

16. All pre-*Baker* cases reaching the merits in which the court presented sufficient statistical data for comparative purposes are collected in Appendix B.

17. For a full discussion of this general problem, see Lewis, *Legislative Apportionment and the Federal Courts*, 71 HARV. L. REV. 1057 (1958).

18. This has been done in Appendix B.

19. 360 Mich. 1, 104 N.W.2d 63 (1960), *rev'd and remanded*, 369 U.S. 429 (1962). On remand, the Michigan court held the state constitutional provision districting the state for the Senate, based somewhat on geography, to be violative of the fourteenth amend-

regard to population. In discussing just what standards they would find permissible, two of the four justices writing for the majority said:

> We would conclude, then . . . that any law of our State giving some citizens more than twice the votes of other citizens in either the primary or general election would lack constitutional equality so as to void that law. Here, then . . . is a maximal standard by which the legislature and the constitutional convention [then in session] may receive fair guidance. When a legislative apportionment provides districts having more than double the population of others, the constitutional range of discretion is violated. This is not to say that less than such 2 to 1 ratio is constitutionally good. It is to say only that peril ends and disaster occurs when that line is crossed.[20]

And three Justices of the Supreme Court in their dissent to *MacDougall v. Green* said:

> None would deny that a state law giving some citizens twice the vote of other citizens in either the primary or general election would lack that equality which the Fourteenth Amendment guarantees.[21]

One court has even gone so far as to adopt a frozen, inflexible formula,[22] and another has suggested a ratio commensurate with that created by the electoral college system.[23]

In arguing that districts with over a 2 to 1 ratio are not "invidiously discriminatory," the proponents always state that the variation falls within the proper range of "reasonable legislative discretion." Such arguments were advanced in every case noted in appendix B. To deprive some citizens of 50 per cent or more of his vote is a serious constitutional violation and, while exact equality is not required, unnecessary inequality cannot be allowed. When a state is made to defend its apportionment plan in court, unsupported claims of "legislative discretion" should not suffice. The state must show, clearly, that its action in depriving certain citizens of any constitutional rights was both necessary and reasonable—that another apportionment plan would not result in appreciably less disfranchisement while not adding greatly to the inconvenience of the voters.

Other common-law countries have found a non-judicial solution to the prob-

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ment. 367 Mich. 176, 116 N.W.2d 350 (1962). Motion to stay denied, July 20, 1962. Motion to stay granted by Mr. Justice Stewart, *sub. nom.* Beadle v. Scholle, July 27, 1962. See N.Y. Times, July 28, 1962, p. 9, col. 2.

20. 367 Mich. 176, 116 N.W.2d 350, 355 (1962).

21. 335 U.S. 281, 288 (1948).

22. The Supreme Court of Arkansas has adopted such a formula, but in that state, the 23rd Amendment to its Constitution specifically allows the Supreme Court to review the action of the Board of Apportionment and correct any "errors" it might make. Stevens v. Faubus, 234 Ark. 826, 354 S.W.2d 707 (1962); Pickens v. Board of Apportionment, 220 Ark. 145, 246 S.W.2d 556 (1952); Shaw v. Adkins, 202 Ark. 856, 153 S.W.2d 415 (1941). *Cf.* Asbury Park Press, Inc. v. Woolley, 33 N.J. 1, 161 A.2d 705 (1960).

23. In Sanders v. Gray, 203 F. Supp. 158 (N.D. Ga. 1962), in which the court struck down the state's county-unit system, it was suggested that the outer limits of allowable discrimination against any group of voters not be greater than that in the Electoral College.

lem of the "rotten-borough" with the size of districts based upon electorate, not population. Re-districting is carried out periodically by non-partisan commissioners. Currently the ratio of the largest English Constituency (with an electorate of 77,298) to the smallest (electorate of 39,980) is just over 1.9 to 1. Representation, however, is closer to equal proportions. Of the 511 Parliament seats assigned to England, 410, or 80 per cent, have an electorate within 20 per cent above or below the ideal or perfect district.[24] In both Scotland and Wales the ratio of largest to smallest constituencies is 2.6 to 1. Two-thirds of the Scottish constituencies and 61 per cent of the Welsh districts fall within the 20 per cent range. The percentage needed to control the Scottish and Welsh delegations to the English Parliament is 44.0 and 44.8 per cent, respectively. The apportionment of the Australian Federal House of Representatives is apparently closest to perfect equality. The districting of the six Australian states is also performed by a non-partisan commission, appointed by the Federal Legislature. Although the states vary tremendously in population, area, and cultural background, the largest district in the 122 member House has an electorate of 46,549, and the smallest has 30,570, resulting in a 1.5 to 1 ratio. It takes 48.3 per cent of the population to control the Australian House of Representatives.

While the largest to smallest ratio is most frequently used, it does not consider the possibility of a geographically isolated or otherwise special area to which it might be desirable to give a separate representative despite its low population.[25] At least one court, therefore, has affirmatively expressed a willingness to depart from pure population criteria to provide for a more complicated formula encompassing both population and geography. In *Fortner v. Barnett*,[26] a Mississippi county chancellor created 49 senate districts composed

24. The English and Australian figures are presented in Appendix C. For a discussion of the present system of non-partisan reapportionment commissioners (the out-growth of the Reform Act of 1832 that originally eliminated the "rotten" borough) see N.Y. Times, April 8, 1962, p. 9, col. 1.

25. Geographical or other non-population factors will be in sharpest issue in Nebraska, the only state with a unicameral legislature. There is thus not available another legislative body to be established along geographical or other lines that might be deemed relevant to stand beside one organized purely upon population.

26. No. 59,965, Chancery Court, First Judicial District, Hinds County, Mississippi, decided June 7, 1962, reported in the Jackson (Mississippi) Daily News, June 7, 1962, p. 1, cols. 7-8. The smallest district, as set out in the opinion, contains a population of 20,086 (the twentieth district). This figure was reached by deducting from the population of Hinds county 177,804, representing four times the average population per senator of 44,451, for the four senators Hinds county elects. This leaves 9,241 persons unrepresented and, added to the population of Claiborne county of 10,845, with whom Hinds elects one senator at large, leaves a total of 20,086 persons to be represented by the Hinds-Claiborne senator. This is less than one half the required population per senator and violates the standards the chancellor himself announced he would follow in creating the new senate districts. If this apparent error is corrected, the next smallest senate district's population is 28,959, which now makes the largest district (with a population of 59,364) just over the two to one limit. The population figures are not in the opinion, but were obtained from the Census Bureau's Advance Reports, Mississippi Final Population Count, PC(A1)-26, Nov. 7, 1960.

of contiguous counties, but (apparently) with the largest almost three times the size of the smallest. Of the 49 districts, however, the population of the 25 smallest districts now totals 45.4 per cent of the state's population, as compared to 34.6 per cent before redistricting. The state was also divided into 147 lower house districts, with one representative guaranteed to each county regardless of its population. The largest district is 6 times the smallest, but it now takes 43.6 per cent of the people to elect 74 representatives, where 29.1 per cent could do so formerly. This plan was not put into effect at once, but held in abeyance until November 24, 1962, to give the legislature time to act. Another departure from a pure population formula exists under Australian law, which requires that population deviation by any district cannot exceed an arbitrarily selected figure, 20 per cent above or below the "perfect" district. Consideration, however, is also given by the commission to community interests, political subdivisions, geography and communications. This accounts for districts varying in size from 4 to 870,764 square miles.[27]

Another standard that has been suggested to measure a given apportionment scheme is to compute the average variation from the average district. This is done by adding all the variations from the "ideal" or perfect 1:1 district, above or below it, and then dividing by the number of districts with a variation. If 10 districts of a 20-district house have a population of 50,000 each, and the other 10 have a population of 150,000 each, for instance, there would be an average variation of 50,000, or 50 per cent above and below the ideal district of 100,000. An arbitrary percentage is selected, and any apportionment scheme resulting in an average variation greater than this figure is declared invalid. In his report of July 31, 1962, a special master appointed by the Wisconsin federal district court to study the facts in a suit brought to invalidate the state apportionment law applied this formula to both the existing laws and those proposed by the plaintiff. He found that the average variation from the average district in the assembly was 9,125, which is just over 23 per cent, while the average variation under the proposed plan was only 4,460 or 11 per cent. The court dismissed the complaint without prejudice, due to the proximity of the 1962 elections, and thus neither adopted nor rejected the formula.[28]

The post-Baker Cases

The rush through the door unlocked by *Baker v. Carr* of litigants claiming unequal legislative voting strength has been staggering. Between March 26,

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See U.S. Bureau of Census, *U.S. Census of Population:* 1960. *Number of Inhabitants,* Miss. Final Report, PC(1)-26A, table 6.

27. 3 AUSTRALIAN ENCYC. 369-70 (1958).

28. Wisconsin v. Zimmerman, Civ. No. 3540, W.D. Wis. Ordered, on July 3, 1962, the appointment of the master. N.Y. Times, July 4, 1962, p. 1, cols. 1-2. For reports of the master, finding no violation of the constitution, see N.Y. Times, Aug. 2, 1962, p. 14, col. 6 and Aug. 6, 1962, p. 16, col. 8.

when *Baker* was decided, and the first week of September, 1962, suits were instituted in at least thirty-one states.[29] Twelve of the states had not yet decided the cases;[30] in four states determination on the merits was postponed pending proximate elections or legislative sessions.[31] Courts in eleven states have held their apportionment schemes invalid; four have been upheld. The tremendous variance in statistics and legal reasoning running through these fifteen cases, however, makes identification of a coherent doctrine or numerical standard next to impossible. Measured by the same yardstick, deviations from perfect equality have been allowed in one state for example, while comparatively smaller variances have been struck down elsewhere.

In the most notable case invalidating a state scheme, the Tennessee federal district court declared a law passed by the legislature after the *Baker* remand unconstitutional.[32] Under the invalid law the largest to smallest district ratios were about 7 to 1 (senate) and 23 to 1 (house) and the percentages needed to control were 26.9 per cent (senate) and 28.7 (house). A Georgia federal court invalidated an apportionment law enabling only 22.6 per cent of the people to control both houses.[33] In Alabama a law giving control of the lower house to 25.7 per cent of the people and of the upper house to 25.1 per cent was declared invalid and replaced with a plan enabling 42.2 per cent to control the lower house and 27.4 per cent the upper house. The ratio under the new system was 5 to 1 for the lower house; 20 to 1 for the upper

29. Fairly complete summaries of these suits are found in N.Y. Times, Aug. 6, 1962, p. 23, col. 1, and N.Y. Herald Tribune, July 25, 1962, p. 11, col. 1.

30. Silver v. Jordan, No. 794987, Superior Court, County of Los Angeles, California; Sincock v. Terry, Civ. No. 2470, D. Del.; Stout v. Hendricks, Civ. No. 1 P 61-C-236, S.D. Ind.; David v. Synhorst, S.D. Iowa; Combs v. Matthews, Franklin Circuit Court, Kentucky; Hedlund v. Hanson, Civ. Action 4-62, Civ. 122, D. Minn. (Hennepin County, Minneapolis, districts only); League of Nebraska Municipalities v. Marsh, Civ. No. 551 L, D. Neb., noted in N.Y. Times, July 21, 1962, p. 19, col. 1; Paley v. Sawyer, No. 1593, D. Nev.; Jackson v. Bodine, N.J. state court; Nolan v. DiSalle, Civ. No. 6082, S.D. Ohio; Mann v. Davis, Civ. No. 2604, E.D. Va., noted in N.Y. Times, April 10, 1962, p. 29, col. 2; Thigpen v. Meyers, Wash. state court.

31. Colorado: Stein v. General Assembly of Colorado, No. 20240, Supreme Ct. of Colorado, decided July 9, 1962 (withheld action until after the next legislative session); Lisco v. McNichols, Civ. No. 7501, D. Colo., decided August 10, 1962 (same result as in *Stein*), noted in N.Y. Times, August 11, 1962, p. 18, col. 2. Pennsylvania: Butcher v. Trimarchi, No. 2431, Equity, No. 151, Commonwealth Docket, Court of Common Pleas, Dauphin County, Pennsylvania, decided June 13, 1962 (judicial review withheld pending possible legislative action). Wisconsin: Wisconsin v. Zimmerman, *supra* note 28 (complaint dismissed on August 14, 1962, without prejudice pending 1962 elections). Wyoming: Whitehead v. Gage, Laramie County Court (action withheld until after the 1962 elections).

32. Baker v. Carr, Civ. No. 2724, M.D. Tenn., filed June 22, 1962, reported in N.Y. Times, June 23, 1962, p. 23, col. 1.

33. Toombs v. Fortson, 205 F. Supp. 248 (N.D. Ga. 1962). In early September the court in approving the submission of a constitutional amendment to the people, stated that one house must be based on the population principle, but the other could be established according to geography. The court expressly analogized to the federal system.

house.[34] Yet a Vermont court [35] declared an apportionment law invalid even though it required 47 per cent of the people to elect a majority of senators, since the largest to smallest ratio was 6 to 1. The Tennessee, Alabama, and Georgia courts held that at least one house must be apportioned directly on population; an Oklahoma federal court in striking down its law stated that *both* houses must be based on "substantial numerical equality."[36] The Rhode Island Supreme Court adopted the approach comparing the largest and smallest districts in holding a 4 to 1 ratio unconstitutional;[37] a Mississippi chancellor, as earlier noted,[38] found its law invalid upon a more complicated formula. A Michigan court held the state constitutional provision districting the state for the senate based partially upon geography, unconstitutional,[39] while the apportionment laws of North Dakota,[40] Florida,[41] and Kansas [42] were invalidated upon other standards.

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34. Sims v. Frink, 205 F. Supp. 245 (M.D. Ala. 1962), and Civ. No. 1744-N, M.D. Ala., filed July 21, 1962, 30 U.S.L. WEEK 2512 (1962), reported in N.Y. Times, July 22, 1962, p. 1, col. 2. The court affirmatively redistricted the state itself, in an attempt to break the "strangle hold" of the minority and thus give the legislature a chance to reapportion itself. The court announced it would continue to do the apportioning itself until the legislature should act. The statistics noted appear in Appendix D to the court's opinion. The total population of Alabama as found in the appendix is 3,244,386; however this is incorrect. The correct 1960 final census count shows a population of 3,266,740, which is the total of all the county populations listed in the appendix. This is the first case in which a court actively redistricted the state effective immediately.

35. Mikell v. Rousseau, No. 385, Chittenden County, Supreme Court of Vermont, decided July 20, 1962, reported in the N.Y. Times, July 21, 1962, p. 19, col. 1.

36. Moss v. Burkhart, Civ. No. 9130, W.D. Okla., decided August 3, 1962, reported in N.Y. Times, August 4, 1962, p. 19, col. 3.

37. The attorney general contends, and petitioners concede, that apportionment along geographical, county, municipal or urban versus rural lines does not necessarily constitute a denial of equal protection if the rationale of such methods can be justified. We are in full accord with such contention, but it is equally true that historical recourse to such apportionment formulae cannot be justified if it results in invidious discrimination. The dilution of the vote of a majority of electors to one fourth of that enjoyed by others is, in our opinion, so unjust as to be invidiously discriminatory.

Sweeney v. Notte, C. Q. No. 643, filed July 24, 1962, at 11-12, reported in N.Y. Times, July 25, 1962, p. 21, col. 1.

38. See note 26 *supra* and accompanying text.

39. Scholle v. Hare, 367 Mich. 176, 116 N.W.2d 350 (1962). See note 19 *supra*.

40. State *ex rel.* Lein v. Sathre, — N.D. —, 113 N.W.2d 679 (1962).

41. Sobel v. Adams, Civ. No. 182-62-M, S.D. Fla.; Swann v. Adams, Civ. No. 186-62-M, S.D. Fla., decided July 23, 1962 (existing apportionment invalid but remedial action stayed until August 13 hearing). See N.Y. Times, July 24, 1962, p. 15, col. 4 (city ed.). The Florida legislature met in special session on August 1 to consider reapportioning. N.Y. Times, Aug. 2, 1962, p. 14, col. 6. Florida, as noted earlier, was the least representative state in the Union (see note 8 *supra*), with 12 per cent of the people controlling both houses of the state legislature. On Sept. 5, 1962, the *Sobel* court permitted submission of a constitutional amendment to the people. If passed, it would allow deviation from a strict population principle in both houses.

42. Harris v. Shanahan, No. 90,476, district court of Shawnee County, decided May

The picture is no clearer among the four state apportionment laws that thus far have survived post-*Baker* litigation. A federal court found the New York statute valid, for instance, although 36.9 per cent of the population can control the state senate and 38.2 per cent the assembly; and even though the largest to smallest ratio is just over 2 to 1 for the senate but 13 to 1 for the assembly.[43] The law enabling 32.7 per cent of the people to control Idaho's assembly, and creating a 15 to 1 ratio was upheld as within the range of legislative discretion.[44] The New Hampshire court refused to strike down a law enabling 45.3 per cent to control the senate (at a 2.6 to 1 ratio) and 43.9 per cent the assembly.[45] The Maryland court, following passage of a special statute which added 19 seats for urban areas to the lower house upheld the districting of its upper house.[46]

Such has been the fate of those who through the end of August 1962 have accepted *Baker v. Carr*'s invitation to come to court. But, as Mr. Justice Clark noted in *Baker*, it is up to the Supreme Court to establish the standards unless "equal protection of the laws" is to have a different meaning in each state.

30, and July 26, 1962, noted in N.Y. Times, July 28, 1962, p. 9, col. 3. The court invalidated the Kansas apportionment laws, enjoined the election officials from proceeding thereunder, and ordered statewide at-large elections. This apparently is the first instance in which a court has ordered such at-large elections without statutory authority. The state has appealed to the Kansas Supreme Court. Letter of William Y. Chalfont, attorney for the plaintiff, to the author, dated July 31, 1962. In a few cases the court ordered at-large elections upon specific statutory authority. See, *e.g.*, Smiley v. Holm, 285 U.S. 355, 375 (1932); Koenig v. Flynn, 285 U.S. 375 (1932); Carroll v. Becker, 285 U.S. 380 (1932); Brown v. Saunders, 159 Va. 28, 166 S.E. 105 (1932); Tishman v. Sprague, 293 N.Y. 42, 55 N.E.2d 858 (1944).

43. WMCA, Inc. v. Simon, 196 F. Supp. 758 (S.D.N.Y. 1961) (ordering the convening of a three judge court), 202 F. Supp. 741 (S.D.N.Y. 1962), *vacated and remanded*, 370 U.S. 190 (1962). The district court on August 17, 1962, held the New York apportionment laws valid. An appeal to the Supreme Court is planned. See 20 CONG. Q. WEEKLY REPORT 1416-17 (1962). See also, for background in New York and nationally, Silva, *Apportionment in New York*, 30 FORDHAM L. REV. 581 (1962).

44. Caesar v. Williams, — Idaho —, 371 P.2d 241 (1962). As the Idaho court noted, the state constitution provides for one representative to each county for its first 17,000 people, and one additional representative for each 3,000 persons over the basic figure. No county has more than a 17,000 population. As the population of the larger counties grew, the requirement for the first representative was raised from 2,500 in 1917 to its present 17,000.

45. Levitt v. Attorney General, — N.H. —, 179 A.2d 286 (1962). Rehearing on this case was denied after the *Baker* decision. 180 A.2d 827.

46. Maryland Committee for Fair Representation v. Tawes, Circuit Court for Anne Arundel County, No. 13,920, Equity, affirmed by the Court of Appeals, Maryland, July 23, 1962, as reported in N.Y. Times, July 24, 1962, p. 15, col. 4. The court's opinion is to be issued later. Rehearing was denied in early September, still without an opinion. For a detailed history of the futility of appeals to the malapportioned Maryland legislature, from 1805 to date, to make a fundamental correction, see Brief for the League of Women Voters of Maryland as *amicus curiae*, pp. 2-3, Maryland Committee for Fair Representation v. Tawes, 228 Md. 412, 180 A.2d 656 (1962).

APPENDIX A

National Municipal League, Compendium on Legislative Apportionment (2d ed. 1962, July 1, 1962 supplement).

STATE LEGISLATIVE APPORTIONMENT

	Senate Districts				Lower House Districts			
State	*Average or "Ideal"*	*Largest*	*Smallest*	*% Necessary to Control*	*Average or "Ideal"*	*Largest*	*Smallest*	*% Necessary to Control*
Ala.	93,278	634,864	15,417	25.1%	30,818	104,767	6,731	25.7%
Alas.	11,308	57,431	4,603	35.0%	5,654	6,605	2,945	49.0%
Ariz. (1)	46,506	331,755	3,868	12.8%	16,277	30,438	5,754	N.A.
Ark.	51,036	80,993	35,983	43.8%	17,863	31,686	4,927	33.3%
Calif.	392,930	6,038,771	14,294	10.7%	196,465	306,191	72,105	44.7%
Colo.	50,113	127,520	17,481	29.8%	26,984	63,760	7,867	32.1%
Conn.	70,423	175,940	26,297	33.4%	8,623	81,089	191	12.0%
Del.	26,193	70,000	4,177	22.0%	12,751	58,228	1,643	18.5%
Fla.	130,304	935,047	9,543	12.0%	52,122	311,682	2,868	12.0%
Ga.	73,021	556,326	13,050	22.6%	19,235	185,422	1,876	22.2%
Hawaii (2)	8,082	14,796	3,397	23.4%	3,962	4,679	2,257	47.8%
Idaho	15,163	93,460	915	16.6%	10,590	15,576	915	32.7%
Ill.	173,812	565,300	53,500	28.7%	170,865	160,200	34,433	39.9%
Ind.	93,250	171,089	39,011	40.4%	46,625	79,538	14,804	34.8%
Iowa	55,110	266,314	29,696	35.2%	25,532	133,157	7,910	26.9%
Kansas	54,465	343,231	16,083	26.8%	17,428	68,646	2,069	18.5%
Ky.	79,951	131,906	45,122	42.0%	30,382	67,789	11,364	34.1%
La.	83,513	248,427	31,175	33.0%	31,019	120,205	6,909	34.1%
Me.	28,508	45,687	16,146	46.9%	6,418	13,102	2,394	39.7%
Md.	106,920	492,428	15,481	14.2%	29,290	82,071	6,541	25.3%
Mass.	128,714	199,107	86,355	44.6%	21,452	49,478	3,559	45.3%
Mich.	200,682	690,259	55,806	29.0%	71,120	135,268	34,006	44.0%
Minn.	50,953	99,446	26,458	40.1%	26,060	99,446	8,343	34.5%
Miss.	44,452	126,502	14,314	34.6%	15,558	59,542	3,576	29.1%
Mo.	127,053	155,683	96,477	47.7%	26,502	52,970	3,960	20.3%
Mont.	12,049	79,016	894	16.1%	7,178	12,537	894	36.6%
Neb. (3)	32,822	51,757	18,824	36.6%				
Nev.	16,781	127,016	568	8.0%	7,710	12,525	568	35.0%
N.H. (1)	25,288	41,457	15,829	45.3%	1,517	N.A.	N.A.	43.9%
N.J.	288,894	923,545	48,555	19.0%	101,113	143,913	48,555	46.5%
N.M.	29,719	262,199	1,874	14.0%	14,394	29,133	1,874	27.0%
N.Y.	287,626	425,276	190,343	36.9%	111,882	190,343	14,974	38.2%
N.C.	91,123	272,111	45,031	36.9%	37,968	82,059	4,520	27.1%
N.D.	12,907	42,041	4,698	31.9%	5,499	8,408	2,665	40.2%
Ohio	288,073	439,000	228,000	41.0%	70,850	97,064	10,274	30.3%
Okla.	52,916	346,038	13,125	24.5%	19,242	62,787	4,496	29.5%
Ore. (4)	58,956	69,634	29,917	47.8%	29,478	39,660	18,955	48.1%

1. N.A. Not Available.
2. Based on registered voters.
3. Nebraska has a unicameral legislature.
4. Oregon has certain larger combination or "floater" districts.

STATE LEGISLATIVE APPORTIONMENT

	Senate Districts				Lower House Districts			
State	*Average or "Ideal"*	*Largest*	*Smallest*	*% Necessary to Control*	*Average or "Ideal"*	*Largest*	*Smallest*	*% Necessary to Control*
Pa.	226,387	553,154	51,793	33.1%	53,902	139,293	4,485	37.7%
R.I.	18,684	47,080	486	18.1%	8,594	18,977	486	46.5%
S.C.	51,796	216,382	8,629	23.6%	19,214	29,490	8,629	46.2%
S.D.	19,443	43,287	10,039	38.3%	9,074	16,688	3,531	38.5%
Tenn.	108,093	237,905	39,727	26.9%	36,031	79,301	3,454	28.7%
Texas	309,022	1,243,158	147,454	30.3%	62,864	105,725	33,987	38.6%
Utah	35,625	64,760	9,408	21.3%	13,916	32,380	1,164	33.3%
Vt.	12,996	18,606	2,927	47.0%	1,585	33,155	38	11.6%
Va.	99,174	285,194	51,637	37.7%	39,669	142,597	20,071	36.8%
Wash.	58,229	145,180	20,023	33.9%	28,820	57,648	12,399	35.3%
W. Va.	58,138	252,925	74,384	46.7%	18,604	252,925	4,391	40.0%
Wisc.	119,780	208,343	74,293	45.0%	39,528	87,486	19,651	40.0%
Wyo.	12,225	30,074	3,062	26.9%	5,894	10,024	2,930	35.8%

APPENDIX B

The following are pre-*Baker* cases in which the apportionment and districting laws of a state were challenged and the court considered the question on the merits. In each case the court either invalidated or sustained the law on the ground that the disparity of population (or voters, citizens or some other standard) among the several districts was too wide to admit of a valid exercise of legislative discretion, or that the differences were within a range of valid discretion. The same case may appear twice. In some cases the laws apportioning both houses of the state legislature were under attack, and the court considered each separately.

	Smallest District	*Ideal or Perfect District*	*Largest District*	*Largest is ? % of smallest*	*Smallest is ? % of ideal*	*Largest is ? % of ideal*
Hume v. Mahan, 1 F. Supp. 142 (E.D. Ky.), 287 U.S. 575 (1932).[1]	238,189	282,400	352,869	148.1	84.3	125.0
Parker v. State *ex rel.* Powell, 133 Ind. 178, 32 N.E. 836, *rehearing denied*, 33 N.E. 119 (1892).[2]	9,055	11,025	13,500	149.1	82.2	122.5
Rogers v. Morgan, 127 Neb. 456, 256 N.W. 1 (1934).[3]	31,933	41,756	49,773	155.9	76.5	119.2
Parker v. State *ex rel.* Powell, *supra*.[2]	4,288	5,510	6,998	163.2	77.8	127.0
Brooks v. State *ex rel.* Singer, 162 Ind. 568, 70 N.E. 980 (1904).	10,787	13,886	17,775	164.8	77.7	128.0
Brooks v. State *ex rel.* Singer, *supra*.	5,079	6,943	8,409	165.6	73.2	121.1
State *ex rel.* Attorney General v. Cunningham, 81 Wis. 440, 51 N.W. 724 (1892).	38,690	51,117	68,601	177.3	75.7	134.2
Sherrill v. O'Brien, 188 N.Y. 185, 81 N.E. 124 (1907).[4]	137,175	141,259	246,187	179.5	97.1	174.3
Brown v. Saunders, 159 Va. 28, 166 S.E. 105 (1932).[5]	183,934	269,092	336,654	183.0	68.4	125.1
State *ex rel.* South St. Paul v. Hetherington, 240 Minn. 298, 61 N.W. 2d 737 (1953).[6]	7,140	9,826	13,653	191.2	72.7	138.9
Merrill v. Mitchell, 257 Mass. 184, 153 N.E. 562 (1926).	4,135	5,788	8,256	199.7	71.4	142.6
Shoemaker v. Lawrence, 45 Dauph. 111, 31 D. & C. 681 (Pa. C.P. Dauphin County 1938).	40,169	55,077	84,892	211.3	72.9	154.1
State *ex rel.* Lamb v. Cunningham, 83 Wis. 90, 53 N.W. 35 (1892).[6]	30,732	51,117	65,952	214.6	60.1	129.0
People *ex rel.* Pond v. Board of Supervisors, 19 N.Y. Supp. 978 (Sup. Ct. Monroe Co.), *aff'd*, 65 Hun. 263, 20 N.Y. Supp. 97 (Sup. Ct. 5th Dep't 1892).	37,539	45,241	80,679	214.9	83.0	178.3
Williams v. Secretary of State, 145 Mich. 447, 108 N.W. 749 (1906).	52,731	79,063	116,033	220.0	66.7	146.8
Pickens v. Board of Apportionment, 220 Ark. 145, 246 S.W.2d 556 (1952).	37,325	54,577	82,375	220.7	68.4	150.9
Broom v. Wood, 1 F. Supp. 134 (S.D. Miss.), *rev'd*, 287 U.S. 1 (1932).[1]	184,000	294,000	414,000	225.0	62.6	140.8
People *ex rel.* Pond v. Board of Supervisors of Monroe County, *supra*.	105,720	180,899	241,138	228.1	58.4	133.3

APPORTIONMENTS INVALIDATED

	Smallest District	*Ideal or Perfect District*	*Largest District*	*Largest is ? % of smallest*	*Smallest is ? % of ideal*	*Largest is ? % of ideal*
Donovan v. Suffolk County Apportionment Commissioners, 225 Mass. 55, 113 N.E. 740 (1916).	2,427	3,258	5,596	230.6	74.5	171.8
Armstrong v. Mitten, 95 Colo. 425, 37 P.2d 757 (1934).[7]	16,843	29,594	41,123	244.2	56.9	139.0
Giddings v. Blacker, 93 Mich. 1, 52 N.W. 944 (1892).	39,727	65,434	97,330	245.0	60.7	148.7
Smith v. Board of Apportionment, 219 Ark. 611, 243 S.W.2d 755 (1951).	37,325	54,577	98,342	263.5	68.4	180.2
State *ex rel.* Harte v. Moorhead, 99 Neb. 527, 156 N.W. 1067 (1916).	1,700	3,940	4,500 (approx.)	264.7	43.1	114.2
State *ex rel.* Lamb v. Cunningham, *supra.*						
Jones v. Freeman, 193 Okla. 554, 146 P.2d 564 (1943), *appeal dismissed and cert. denied*, 322 U.S. 717 (1944).[8]	8,626	16,868	25,111	291.1	51.1	148.9
Rogers v. Morgan, *supra.*[3]	11,946	23,364	34,879	292.0	51.3	149.3
Attorney General v. Suffolk County Apportionment Commissioners, 224 Mass. 598, 113 N.E. 581 (1916).	7,167	13,779	21,181	295.5	52.0	153.7
People *ex rel.* Baird v. Board of Supervisors of Kings County, 138 N.Y. 95, 33 N.E. 827 (1893).[9]	1,957	3,258	6,182	315.9	60.1	189.7
Stiglitz v. Schardien, 239 Ky. 799, 40 S.W.2d 315 (1931).	31,685	54,877	102,805	324.5	57.7	187.3
Moran v. Bowley, 347 Ill. 148, 179 N.E. 526 (1932).[10]	39,210	65,043	128,595	328.0	60.3	197.7
State *ex rel.* Winnie v. Stoddard, 25 Nev. 452, 62 Pac. 237 (1900).[8]	158,738	280,000	541,785	341.3	56.7	193.5
State *ex rel.* Attorney General v. Cunningham, *supra.*	703	1,500	2,446	349.5	46.9	163.1
Williams v. Woods, 162 S.W. 1031 (Tex. Civ. App. 1914) (on basis of qualified voters).	6,823	16,868	38,801	568.7	40.4	230.0
Stiglitz v. Schardien, *supra.*	50	155	300	600.0	32.3	193.5
State *ex rel.* Van Bokkelen v. Canaday, 73 N.C. 198 (1875).	9,442	24,166	60,457	640.3	38.1	250.2
Armstrong v. Mitten, *supra.*[7]	400	1,200	2,800	700.0	33.3	233.3
Ragland v. Anderson, 125 Ky. 141, 100 S.W. 865 (1907).	3,367	15,935	23,988	712.4	21.1	150.5
Jones v. Freeman, *supra.*[8]	7,407	21,471	53,263	719.1	34.5	248.1
State *ex rel.* Winnie v. Stoddard, *supra.*[8]	23,817	53,101	193,363	811.9	44.9	364.1
	703	3,000	6,437	915.6	23.4	214.2

APPORTIONMENTS SUSTAINED

	Smallest District	*Ideal or Perfect District*	*Largest District*	*Largest is ? % of smallest*	*Smallest is ? % of ideal*	*Largest is ? % of ideal*
State *ex rel.* Bowman v. Dammann, 209 Wis. 21, 243 N.W. 481 (1932).	16,037	29,101	58,000	361.7	55.1	199.3
Graham v. Special Commissioners of Suffolk County, 306 Mass. 237, 27 N.E.2d 995 (1940).	6,107	7,784	12,427	203.5	78.5	159.6
Stenson v. Secretary of State, 308 Mich. 48, 13 N.W.2d 202 (1944).	27,807	52,561	76,222	276.0	53.0	144.7
Brophy v. Suffolk County Apportionment Commissioners, 225 Mass. 124, 113 N.E. 1040 (1916).	2,427	3,258	4,282	176.4	74.5	131.4
Watts v. Carter, 355 S.W.2d 657 (Ct. of App. Ky. 1962).[5]	350,839	434,000	610,947	174.1	81.0	140.8
Pickens v. Board of Apportionment, 220 Ark. 145, 246 S.W.2d 556 (1952).[11]	43,114	54,577	65,562	152.1	78.8	120.1
People *ex rel.* Woodyatt v. Thompson, 155 Ill. 451, 40 N.E. 307 (1895).	62,007	73,178	88,454	142.7	84.7	120.9
Attorney General v. Secretary of the Commonwealth, 306 Mass. 25, 27 N.E.2d 265 (1940).	40,493	46,184	51,988	128.4	87.7	112.6
In re Baird, 142 N.Y. 523, 37 N.E. 619 (1894).	48,944	54,877	61,263	125.2	89.2	111.6
City of Lansing v. Ingham County Clerk, 308 Mich. 560, 14 N.W.2d 426 (1944).	37,589	43,538	46,513	123.7	86.3	106.8
People v. Board of Supervisors of St. Lawrence County, 148 N.Y. 187, 42 N.E. 592 (1896).	39,966	40,324	40,682	101.8	99.1	100.9

Other pre-*Baker* state cases not citing statistics include the following:

State v. Howell, 92 Wash. 540, 159 Pac. 777 (1916)
Meighen v. Weatherill, 125 Minn. 336, 147 N.W. 105 (1914)
State v. Hitchcock, 241 Mo. 433, 146 S.W. 40 (1912)
State v. Schnitger, 16 Wyo. 479, 95 Pac. 699 (1908)

Even after *Colgrove* v. *Green*, 328 U.S. 549 (1946), three lower federal courts prior to *Baker* permitted malapportionment suits to reach the merits. They never reached the Supreme Court, however. In two cases the legislatures chose to re-apportion rather than risk the hazards of an appeal. Dyer v. Kazuhise Abe, 138 F. Supp. 220 (D. Hawaii), *rev'd as moot*, 256 F.2d 728 (9th Cir. 1958) (Congress amended the Organic Act of Hawaii after the district court denied a motion to dismiss); and Magraw v. Donovan, 159 F. Supp. 901 (D. Minn. 1958) (ordering the convening of a three judge court), 163 F. Supp. 184 (D. Minn. 1958) (denying a motion to dismiss and setting the case for hearing after the next legislative session), 177 F. Supp. 803 (D. Minn. 1959) (dismissed as moot). WMCA, Inc. v. Simon, 196 F. Supp. 758 (S.D.N.Y. 1961) (ordering the convening of a three judge court), 202 F. Supp. 741 (S.D.N.Y. 1961), *rev'd and remanded*, 370 U.S. 190 (1962). The district court, on August 17, 1962, held that the New York apportionment laws were valid. An appeal to the Supreme Court is planned.

1. The Supreme Court held that there was no federal statutory requirement of equality among the populations of the Congressional districts of a state, and the Fourteenth Amendment problem was not discussed by the Court; the district court had held that there was such a requirement and invalidated the State Congressional districting law. See note 5 *infra*.

2. The only statistics in the opinion are the population of the eleven smallest and largest senate districts and the twenty smallest and largest representative districts. The population for the smallest and largest districts are actually the average of the eleven or twenty smallest or largest districts, and the actual figures would undoubtedly be more extreme. The court, however, only considered the averages.

3. These statistics are not in the court's opinion, but were given to the author by Mr. George H. Turner, Clerk of the Supreme Court of Nebraska, in his letter of June 4, 1962.

4. Statistics refer to New York City only. One district had a population of 137,175, and a neighboring district, with two counties, had a population of 246,187. The court moved one county (population 66,441) from the second to the first district. The ideal district population is based on state-wide figures.

5. The court invalidated the law establishing the state's Congressional districts.

6. The court upheld the law which resulted in these statistics, but on the sole ground that the plaintiffs did not submit an alternative apportionment plan which would yield smaller population differences. The court noted the "gross disparity" among the districts and clearly implied that had such a plan been submitted, it would have held the law invalid, even though it met the technical requirements of the state statute under which the county commissioners acted.

7. These statistics do not appear in the opinion, but were taken from 3 FIFTEENTH CENSUS OF THE UNITED STATES 306-09 (1930), based on the counties named in the opinion.

8. The court said the apportionment was invalid, but declined to act on the ground that it could find no appropriate remedy.

9. The population of the ideal (or perfect) district was given in the related case of *In re* Baird, 142 N.Y. 523, 37 N.E. 619 (1894).

10. *Daly* v. *County of Madison*, 378 Ill. 357, 38 N.E.2d 160 (1941), overruled the law of *Moran* on the authority of *Wood* v. *Broom*, 287 U.S. 1 (1932). See note 1 *supra*.

11. This apportionment was devised and decreed by the court under the authority of the twenty-third amendment to the Arkansas Constitution.

APPENDIX C

APPORTIONMENT OF THE ENGLISH AND AUSTRALIAN LEGISLATURES AS REPORTED IN THE FIRST PERIODICAL REPORT OF THE BOUNDARY COMMISSION FOR ENGLAND, SCOTLAND AND WALES (1954) AND THE REPORT OF THE COMMISSIONERS FOR TASMANIA, SOUTHERN AUSTRALIA, WESTERN AUSTRALIA, QUEENSLAND, VICTORIA AND NEW SOUTH WALES (1955).

	Smallest District	*Ideal or Perfect District*	*Largest District*	*Largest is ? % of Smallest*	*Smallest is ? % of Ideal*	*Largest is ? % of Ideal*
Great Britain						
England	39,980	56,564	77,298	193.3	70.7	136.7
Scotland	25,311	47,989	66,500	262.7	52.7	138.6
Wales	27,722	50,397	73,049	263.5	55.0	144.9
Northern Ireland is given only 12 seats, which is too small a number to chart.						
Australia						
New South Wales	38,486	43,482	46,185	120.0	88.5	106.2
Victoria	39,671	42,996	46,594	117.5	92.3	108.4
Queensland	33,906	41,309	46,279	136.5	82.1	112.0
Western Australia	32,159	37,378	40,864	127.1	86.0	109.3
Southern Australia	35,310	41,672	43,852	124.2	84.7	105.2
Tasmania	30,570	34,611	38,749	126.8	88.3	112.0
All States	30,570	42,053	46,594	152.4	72.7	110.8

This excludes the non-voting representative from the Northern Territories and the one from the Australian Capital Territory.

The Commissioners are currently meeting to reapportion the six states, amidst controversy and charges of favoritism. Sidney (Australia) Morning Herald, July 19, 1962, p. 1.

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